NO. 15-5211

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

M. KATHLEEN MCKINNEY, FOR AND ON BEHALF OF THE NATIONAL LABOR RELATIONS BOARD,

PETITIONER – APPELLEE,

V.

OZBURN HESSEY LOGISTICS, LLC,

RESPONDENT – APPELLANT.

On Appeal From the United States District Court for the Western District of Tennessee
Case No. 2:14-CV-02445

BRIEF OF APPELLANT OZBURN HESSEY LOGISTICS, LLC

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CORPORATE DISCLOSURE

Ozburn-Hessey Logistics, LLC's ("OHL") name changed to Geodis Logistics, LLC effective September 1, 2016. No publicly held corporation owns 10% or more of Geodis Logistics, LLC's stock.

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STATEMENT REGARDING ORAL ARGUMENT

This appeal raises important issues concerning injunctive relief under Section 10(j) of the National Labor Relations Act ("NLRA" or "the Act"). In light of the voluminous record in this case and the substantial legal arguments advanced by OHL, OHL respectfully requests that the Court schedule oral argument. OHL believes that oral argument will assist the Court in resolving these important issues and synthesizing the arguments and issues before the Court.

JURISDICTIONAL STATEMENT

This Court has jurisdiction over this appeal pursuant to 28 U.S.C § 1292(a)(1), since this is an appeal of the U.S. District Court for the Western District of Tennessee's ("District Court's") January 29, 2015, interlocutory order granting injunctive relief against OHL.

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

1. Whether the District Court erred in finding that the injunctive relief requested by the NLRB was just and proper.

2. Whether the District Court erred in finding that there was reasonable cause to believe that OHL violated the National Labor Relations Act.

3. Whether the District Court erred in declining to apply equitable criteria as part of the just and proper analysis under Section 10(j) of the National Labor Relations Act.

4. Whether the District Court erred in denying OHL's Motion to Dismiss, pursuant to Fed. R. Civ. P. 12(b)(1).

STATEMENT OF THE CASE

A. Facts Relevant to the Issues Presented for Review

i. General Background Facts and Organizing History.

OHL provides third-party logistics solutions to customers. OHL's employees pick, pack and ship its customers' products to consumers and retail locations. OHL's Memphis operations include four warehouses with over 300 employees. OHL's operations are divided into "accounts," which are groups of employees who perform services for a particular customer.

The USW's organizing attempts at OHL's Memphis operations have a complex history. However, that history is important background for this case. In 2009, the USW began its efforts to organize OHL's Memphis employees. These efforts culminated in a NLRB election on July 27, 2009, in which the USW handily lost by a count of 180 to 119. Rather than accepting the will of OHL's employees in rejecting USW representation, the union objected to the election's outcome. Before the NLRB could rule on the union's election objections, the USW withdrew those objections and petitioned for a new (second) election. The second election was conducted on July 27, 2011. The outcome of that election was litigated and finally resolved by the United States Court of Appeals for the District of Columbia Circuit in August 2016. *See Ozburn–Hessey Logistics, LLC v. Nat'l Labor Relations Bd.*, 833 F.3d 210, 213 (D.C. Cir. 2016).

It is against this backdrop that the NLRB sought and obtained extraordinary injunctive relief as a result of alleged unfair labor practices that occurred between October 2012 and October 2013. These events occurred more than a year, and in some cases more than two years, after the last election at OHL. These events occurred during a time period when there was no bargaining taking place because there was no final outcome of the election. These events occurred between seven and nineteen months prior to the Board's Petition in this case, and over four years ago.

ii. Nate Jones' Discharge.

Nate Jones was lawfully discharged when he left a propane lift unattended and running on October 16, 2013, in violation of OHL's safety policies. Less than six months before the incident that led to his termination, Mr. Jones received a final written warning for a safety violation on June 14, 2013. (GC Ex. 21).[1] Mr. Jones acknowledged that after receiving the final written warning for a safety violation, he expected to be terminated if he had any further safety violations.

[1] References to page numbers in the trial transcript are noted in parenthesis, such as "(_)." References to OHL (a/k/a Respondent) Exhibits are noted as "R. Ex. __". References to NLRB (a/k/a General Counsel) Exhibits are noted as "G.C. Ex. __." The entire administrative record, including the trial transcripts and exhibits were filed with the District Court at Docket Nos. 15 and 19. However, the record was manually filed on compact discs, so the individual pages of the record do not have independent ECF stamps and Page ID numbers.

(251-252). Mr. Jones further acknowledged that it is a violation of OHL's safety rules to leave a lift running after getting off of it. (256, R. Ex. 4). Mr. Jones went through Powered Industrial Truck ("PIT") training twice, where this safety rule is covered. (254-255). He signed a form acknowledging that violation of this rule can "result in discipline up to and including termination!" (R. Ex. 4). Despite his repeated PIT training, Mr. Jones left his lift unattended and running while talking to two other employees on October 16, 2013.

On October 16, 2013, Tammy Wade witnessed Mr. Jones get off his forklift, take two steps, and then pull the hand brake when the lift started rolling. (1735). Ms. Wade explained that the lift had not come to a complete stop, and the lift had forward momentum when Mr. Jones left it. (1747). She saw Mr. Jones talking to another employee for an extended period of time with the lift running. (1735-1736). According to Ms. Wade, Mr. Jones was 15 to 20 feet from the lift.

After a period of time when it was apparent that Mr. Jones was not returning to his lift, Ms. Wade got up from her desk, walked over to Mr. Jones' lift, and removed the key. (1735). She then went to find her manager, David Maxey. (1735). When she was on her way to find Mr. Maxey, she saw Phil Smith and Jim Steel. (1736). At this point, she had walked "probably half a football field" and in the time that it had taken her to walk that far, Mr. Jones had not returned to his lift.

(1737). He was still talking to another employee. (1737). Phil Smith told Ms. Wade to hold on to the keys, and to send him an e-mail summarizing what had transpired. (1737). Ms. Wade sent an e-mail to Mr. Maxey, copied to Mr. Smith, summarizing these events. (R. Ex. 38).

Phil Smith also witnessed Mr. Jones leaving his lift unattended. Mr. Smith corroborates Ms. Wade's version of events. He saw the lift roll when Mr. Jones got off the lift. (2539). Mr. Smith further debunked Mr. Jones' testimony that he put the lift in park (234), since the lift Mr. Jones was operating does not have a parking gear. (2540). It only has forward, neutral, and reverse gears. (2540). Further, Mr. Smith was able to confirm that Mr. Jones was at least 30 feet away from his lift based on Mr. Smith's detailed knowledge of the spacing between the racks and aisles. (2542).

While Mr. Jones' version of events differs slightly, even his version of events establishes the safety violation that led to his termination. Mr. Jones admits that he was "20 something" feet away from his lift talking to two other employees, Bobby Hill and James Wright, for three to four minutes while his lift was running. (259). He further admits that he had to ask employees what happened to the keys to his lift when he returned, indicating that he was not paying close enough

attention to the lift to notice that the keys had been removed or who had removed them. (236, 265).

Notably, Mr. Jones admits that it is a safety requirement to maintain "visual contact" with his lift, but he admits that he had to ask other employees to find out what happened to his key. (255, 236, 265). If he had to ask what happened to his key, then he could not have maintained visual contact with the lift. As previously indicated, Mr. Jones further admits that OHL's safety rules require him to turn the lift off when he gets off of it, but he admits that he did not do that. (R. Ex. 4).

Lisa Johnson, a Regional Human Resources Manager for OHL, investigated this incident. She obtained statements from Mr. Jones (G.C. Ex. 32), Ms. Wade (R. Ex. 68), James Mitchell (R. Ex. 69), and Mathew Warner (R. Ex. 70). Ms. Johnson forwarded the investigation notes to Shannon Miles, OHL's HR Director, who approved Mr. Jones' termination. (2560).

iii. Jennifer Smith's Job Functions.

Jennifer Smith's job functions were transferred from LTL (Less Than Trailerload) auditing to small parts picking within the Browne-Halco account. The NLRB claims that this change in job functions was in retaliation for Ms. Smith's union support and her prior testimony. In order to prevail on this allegation, the NLRB must establish two separate propositions: (1) that small parts picking is more "onerous and rigorous" (the terms alleged by the General Counsel in the

Complaint) than LTL auditing, and (2) that the transfer in job functions was motivated by Ms. Smith's union support, rather than legitimate management considerations.

Other than Ms. Smith's self-serving testimony, there is no evidence that small parts picking is more onerous and rigorous than LTL auditing. The small parts orders are a lot smaller, lighter, and easier to handle. (2227). The small parts go out via Fedex, rather than on pallets. (2227). According to Mr. Maxey, small parts picking is less strenuous than LTL auditing. (2227).

B. Procedural History

This case arises out of unfair labor practice charges that the USW filed with the NLRB between July 2013 and February 2014. The charges were consolidated for trial before the Honorable Keltner Locke, an Administrative Law Judge ("ALJ") of the NLRB, on June 2-6, 2014 and July 21-25, 2014. The NLRB filed a Petition for Temporary Injunction under Section 10(j) of the NLRA on June 13, 2014 in the United States District Court for the Western District of Tennessee. The District Court granted the NLRB's Petition in its entirety on January 29, 2015. (Order Granting Petition for Temporary Injunction, Doc. 30). OHL appealed that ruling to this Court on February 27, 2015.

On April 28, 2015, ALJ Locke issued his decision regarding the unfair labor charges. (Decision of the ALJ, Doc. 36-2). The ALJ concluded that most of the

charges should be dismissed while certain others had merit. The charges dismissed by the ALJ included those related to Nate Jones and Jennifer Smith. The General Counsel filed exceptions to the ALJ's dismissals on June 16, 2015, which are currently pending before the NLRB.

With regard to Nate Jones, the ALJ credited the testimony of OHL Senior Employee Relations Manager Shannon Miles, who made the decision to discharge Jones and who testified that she was unaware that Jones engaged in any protected activity. The ALJ pointed to the fact that Ms. Miles' was not located in Memphis, and stated that Mr. Jones' "minimal" union activity was "not the sort of protected activity most likely to be reported all the way up to Miles, who worked at the corporate headquarters rather than at the warehouses in Memphis." Because Miles was unaware of Jones' protected activity, the ALJ found that Jones' protected activity was not a substantial or motivating factor in Miles' decision to terminate him.

With regard to Ms. Smith, the ALJ credited the testimony of OHL Operations Manager David Maxey over Ms. Smith's testimony. Maxey testified that he "actually assigned Smith to less strenuous work." As an auditor, Smith had to pick up heavy boxes, but as a picker she was picking "small part orders" that were lighter and easier to handle. Thus, the ALJ concluded that Ms. Smith's duties

as a picker are not "appreciably more arduous than that of auditor," and found that the change in Ms. Smith's job duties was not an adverse employment action.

Based on the ALJ's dismissal of many of the unfair labor charges, including the dismissal of the allegations related to Nate Jones and Jennifer Smith, OHL filed a motion for indicative ruling in the District Court on May 13, 2015. (Motion for Indicative Ruling, Doc. 36). OHL also filed a motion in this Court to remand the case to the District Court for reconsideration in light of the ALJ's ruling and to hold the appeal in abeyance pending the remand. This Court granted OHL's motion on December 16, 2015 and remanded the case to the District Court.

The NLRB opposed only certain portions of OHL's motion for indicative ruling. Accordingly, on January 5, 2016, the District Court granted in part OHL's motion for indicative ruling and modified the injunction in accordance with the unopposed portions of OHL's motion. (Order Amending Injunction, Doc. 49). The remaining charges in dispute included the discharges of Shawn Wade, Reginald Ishmon, and Nate Jones; and the reassignment of Jennifer Smith from auditor to picker. On March 10, 2017, the District Court entered an order denying the remaining portions of OHL's motion and declined to further amend the 10(j) injunction as it relates to these four charges. (Order on Motions for Indicative Ruling on Disputed Issues, Doc. 52). OHL notified this Court of the District

Court's decision on April 14, 2017, and the stay on OHL's existing appeal was lifted. Because Shawn Wade and Reginald Ishmon have since resigned from their employment at OHL, this appeal is limited to the charges concerning Nate Jones and Jennifer Smith. These employees remain employed today, so the 10(j) injunction imposed by the District Court continues to affect OHL and its operations.

SUMMARY OF ARGUMENT

The District Court imposed extraordinary injunctive relief by reinstating employees and unwinding lawful and legitimate discipline and job transfers issued to employees by OHL. With regard to the two remaining employees who the NLRB seeks to protect in this case, Mr. Jones committed repeated safety infractions and Ms. Smith's job functions were transferred to a position that was no more onerous or rigorous than her previous position. While the applicable legal standards in this case are deferential to the NLRB, they do not require the suspension of common sense.

It is neither just nor proper to award injunctive relief in this case, since the NLRB waited over a year to seek injunctive relief, and the NLRB has failed to carry its burden of showing that the requested relief is necessary to preserve the remedial powers of the Board.

The District Court erred in failing to consider equitable criteria as part of its just and proper analysis, even though the statutory terms "just" and "proper" require the incorporation of equitable criteria.

The District Court erred in denying OHL's motion to dismiss for lack of subject matter jurisdiction, even though this case was filed by a Regional Director who lacked authority to issue administrative complaints in Memphis.

For all of these reasons, OHL respectfully requests that the Court reverse the temporary injunction imposed by the District Court.

STANDARD OF REVIEW

In order to grant injunctive relief under Section 10(j) of the NLRA, the Court must find there is reasonable cause to believe unfair labor practices have occurred, and the Court must also find that the requested relief is just and proper. *Schaub v. West Michigan Plumbing & Heating, Inc.*, 250 F.3d 962, 969 (6th Cir. 2001) (*citing Fleischut v. Nixon Detroit Diesel, Inc.*, 859 F.2d 26, 28 (6th Cir. 1988)). Section 10(j) relief must be "reasonably necessary to preserve the ultimate remedial power of the Board and is not to be a substitute for the exercise of that power." *Gottfried v. Frankel*, 818 F.2d 485, 494 (6th Cir. 1987) (*quoting Kobell v. Suburban Lines, Inc.*, 731 F.2d 1076, 1091 (3rd Cir. 1984)).

"The primary concern under the just and proper inquiry is whether such relief is necessary to return the parties to [the] status quo pending the Board's proceedings in order to protect the Board's remedial powers under the NLRA, and whether achieving [the] status quo is possible." *Shaub v. Fivecap, Inc.*, 125 F.3d 856 (6th Cir. 1997) (quoting *Calatrello v. Automatic Sprinkler Corp. of Am.*, 55 F.3d 208, 214 (6th Cir.1995) and *Frye v. Specialty Envelope, Inc.*, 10 F.3d 1221, 1226 (6th Cir.1993)).

This Court reviews *de novo* a district court's determination as to whether the NLRB's theory is substantial and not frivolous, and it reviews for clear error the District Court's determination whether the facts are consistent with the NLRB's

legal theory. *Glasser ex rel. N.L.R.B. v. ADT Sec. Servs., Inc.*, 379 F. App'x 483, 486 (6th Cir. 2010). This Court reviews the District Court's determination that injunctive relief is just and proper for an abuse of discretion. *Calatrello v. Automatic Sprinkler Corp. of Am.*, 55 F.3d 208, 214 (6th Cir. 1995).

ARGUMENT

I. THE DISTRICT COURT ERRED IN FINDING THAT A 10(J) INJUNCTION WAS JUST AND PROPER.

A. Injunctive Relief is Not Necessary to Preserve the Remedial Powers of the Board.

In analyzing whether injunctive relief under Section 10(j) of the Act is just and proper, "[c]ourts must be mindful that the relief to be granted is only that reasonably necessary to preserve the ultimate remedial power of the Board and is not to be a substitute for the exercise of that power." *Ahearn v. Jackson Hosp. Corp.*, 351 F.3d 226, 239 (6th Cir. 2003)(citing *Schaub v. Detroit Newspaper Agency*, 154 F.3d 276, 279 (6th Cir.1998)). In several recent cases, circuit courts have vacated 10(j) injunctions imposed by district courts and held that the Board's normal adjudicatory process would not frustrate the remedial purpose of the Act. *See, e.g., McKinney ex rel. N.L.R.B. v. Southern Bakeries, LLC*, 786 F.3d 1119 (8th Cir. 2015) (stating that "[t]here is no indication in this case that allowing the ordinary adjudicatory process to run its course would significantly undermine the Board's ability to remedy the alleged unfair labor practices."); *McKinney ex rel. N.L.R.B. v. Creative Vision Resources, L.L.C.*, 783 F.3d 293 (5th Cir. 2015) (holding that "[b]oth the NLRB And the district court have failed to articulate facts that suggest the administrative process is insufficient to afford relief in this

case…")[2]. In *Creative Vision Resources*, the court held that "[b]ecause the petition for injunctive relief has been pending for several years and is now before the NLRB for a final decision, the extraordinary remedy of a § 10(j) injunction is unnecessary as far as appears the record before us. 783 F.3d at 302.

OHL's alleged unfair labor practices cannot impact collective bargaining or organizing because there was no ongoing collective bargaining or organizing at OHL at the time of the alleged unfair labor practices. Since collective bargaining did not begin at OHL until over three years later, there was no collective bargaining that could be impacted by OHL's alleged unfair labor practices. Moreover, there was no certification of the USW at the time of the events giving rise to this case, so there was no bargaining obligation impacted.

Additionally, there is no ongoing organizing activity at OHL, and the NLRB has not offered any evidence of organizing activity that would require protection. The NLRB's affidavits suggest that the last organizing activity at OHL occurred in May or June 2013, almost four years ago. The NLRB has not offered any evidence of any organizing activity at OHL since then. Because OHL is not chilling ongoing organizing activity or impacting collective bargaining, there is no reason that injunctive relief would be necessary, much less just or proper.

[2] Notably, the Petitioner in these two cases is the same Petitioner in the instant case, suggesting a propensity to overreach on her part.

There is no reason why the remedial purposes of the Act cannot be served by any future Board remedies. If the USW and General Counsel ultimately prevail in the unfair labor practice litigation, then the remedy would include reinstatement or reassignment of the employees at issue (which was already done years ago). There is no evidence in the record to suggest that the Board's remedial authority would be preserved to any material extent based on the employees' reinstatement or reassignment 1 to 2 years after the allegedly adverse employment actions, as opposed to 3 to 4 years after these actions (as would be the case if normal Board processes ran their course).

B. The Board's Just and Proper Evidence is Lacking.

The NLRB argues that injunctive relief is warranted for two reasons: (1) it claims that OHL has "chilled" union activity thereby "eroding" union support; and (2) it argues that injunctive relief is necessary to protect the "vulnerability" of a "newly certified union." Upon closer scrutiny, these arguments lack both logical and evidentiary support.

The NLRB has not shown that OHL's actions, even if they were unlawful (which they were not), had any chilling effect or otherwise "eroded" union support. First of all, the NLRB's alleged chilling evidence was stale. As indicated above, the NLRB's chilling evidence relates to May and June of 2013, not at the time of

the injunction and not now.[3] The NLRB's burden is to show that injunctive relief is just and proper now; not that it was just and proper years before the petition was filed.

Moreover, even if the "chilling effect" of OHL's conduct in May 2013 was relevant, which it is not, there is an utter lack of proof of any "cause and effect" relationship between OHL's alleged conduct and any alleged chill or erosion of union support. The NLRB claims that the discharge of union supporters chilled employees from signing union cards and attending union meetings. In order for that to be the case, there are three logical prerequisites: (1) that the employees were aware of the discharges; (2) that the employees knew that the employees who were discharged were discharged for unlawful reasons; and (3) that the knowledge of the alleged unlawful discharges caused other employees to decline to sign union cards and attend union meetings. The record is devoid of any evidence establishing any such "cause and effect" relationship between OHL's actions and any employee's decision regarding signing a card or attending a meeting.

There is no evidence in the record that any employee was aware of Nate Jones' discharge or Jennifer Smith's reassignment at the time that the employee

[3] The NLRB filed affidavits from employees purporting to show "chill" (as part of the filing at Docket No. 15). However, these affidavits did not discuss any alleged chilling after June 2013.

decided not to sign a union card or not to attend a meeting. There is no evidence in the record that even if an employee was aware of Nate Jones' discharge or Jennifer Smith's reassignment, that employee was aware of the reasons for Nate Jones' discharge or Jennifer Smith's reassignment at the time the employee chose not to sign the union card or attend the union meeting. Finally, there is no evidence that even if an employee were aware of the reasons for Nate Jones' discharge or Jennifer Smith's reassignment, their knowledge of those reasons motivated them not to sign a union card or to attend a union meeting.

Even though it is the NLRB's burden of proof to establish a chilling effect, there is evidence that affirmatively negates any inference of a cause and effect relationship between OHL's actions and the alleged chilling effect or erosion of union support. First, the "chilling" affidavits came from employees in the HP and Waterpick accounts (Anita Wells – HP, Glenora Whitley – Waterpick, and Helen Herron – Waterpick). Neither Mr. Jones or Ms. Smith worked in these accounts—they both worked in the Browne-Halco account. (217, 1174). Thus, the "chilling" allegations came from employees in specific accounts, and would not be known to employees in accounts other than those where the alleged chilling occurred. Furthermore, the so-called chilling evidence relates exclusively to May and June of 2013.

Mr. Jones' discharge occurred in October 2013, so there is no way that his discharge could have caused the "chill" a full four months earlier in May or June 2013. Similarly, Ms. Smith's transfer of job duties around June 2013 could not have caused the "chill" in May 2013. Again, the only evidence of a purported chill is in May and June of 2013, and the allegations regarding Mr. Jones and Ms. Smith are temporally remote to and could not conceivably have caused the alleged chill.

The NLRB also makes the incorrect assumption that employees only disfavor the union because of employer misconduct. Employees oppose unionization for many reasons, including their desire to avoid a third-party intermediary between themselves and their employer, the uncertainties of the collective bargaining process, the possibility of strikes and lockouts, and the lack of desire to be pressured by the union to turn over a portion of their paycheck to pay union dues. All of these are legitimate explanations as to why employees would not support a union. Employees can choose to oppose unionization for legitimate reasons, and the NLRB has not proven that OHL's employees opposed unionization based on illegitimate considerations prompted by OHL.

Even the NLRB's purported evidence of chill and erosion points to reasons other than the alleged actions of OHL at-issue in this case as the cause of the chill. For example, Anita Wells' affidavit says that employees would tell her when they

refused to sign cards that "they were not going to sign a card until they saw what the union was going to do for them and because they did not want the union to start taking money out of their paychecks right now." (Wells Affidavit, p. 2). Similarly, Helen Herron testifies that when she asks employees why they will not sign a card, the employees respond that they "wanted to wait and see what the union will do for them." (Herron Affidavit, p. 2). Even Mr. Brandon, the USW organizer, attributes the chilling effect to the employer's "unilateral changes" and comments allegedly made in captive audience speeches, none of which are the subject of the unfair labor practices at issue in this case. (Brandon Affidavit, p. 4). Thus, even the NLRB's own evidence of "chilling" attributes causes to the alleged "chilling" other than the alleged unfair labor practices at issue in this case.

The NLRB's chilling evidence also fails to account for temporal events and the law of diminishing returns. The NLRB's evidence speaks to a renewed interest in the union after the union won a ballot count. That renewed interest logically waned in the following days. Perhaps all of the employees who were interested in signing cards had signed them. Perhaps, all of the employees who were interested in attending meetings attended them. Perhaps, when employees realized that the results were still inconclusive, they lost interest. There is no reason to believe that the diminished union activity resulted from OHL's actions at issue in this case, as

opposed to the passage of time and the exhaustion of potential targets who were receptive to the union's message.

Finally, the NLRB is seeking to amalgamate the alleged effect of multiple employment actions without establishing which actions had an alleged affect in which accounts, during which time periods. The employment actions at issue in this case are not monolithic, and their alleged chilling effect cannot be monolithic. It is the NLRB's burden to offer just and proper evidence for the alleged discharge and transfer individually, and it has failed to even attempt to do so.

C. The NLRB's Delay Renders Injunctive Relief Unjust and Improper.

Courts, including the Sixth Circuit, have held that the Board's delay in seeking injunctive relief is a factor to be considered in deciding its appropriateness. In *N.L.R.B. v. Hartman and Tyner, Inc.*, 714 F.3d 1244, 1252 (11th Cir. 2013), the U.S. Court of Appeals for the Eleventh Circuit affirmed the denial of 10(j) relief, and in doing so it noted the effect of delay in seeking 10(j) relief:

> [Delay] is relevant because delay makes it difficult to justify granting temporary injunctive relief when that relief may not be "any more effective than a final Board order" several months after the alleged unfair labor practices have occurred. *Id.* The district court did not examine the delay for delay's own sake or craft any kind of bright line rule, but rather viewed the delay as further evidence that the Union's organizational drive was not likely to gain any additional marginal benefit from temporary injunctive relief as opposed to a final Board order.

The Sixth Circuit holds that "delay is a permissible consideration in denying a section 10(j) petition, especially if the harm has already occurred and the parties cannot be returned to status quo." *Gottfried*, 818 F.2d at 495 (citing *Solien v. Merchants Home Delivery Serv., Inc*., 557 F.2d 622, 627 (8th Cir.1977); *see also Schaub v. Detroit Newspaper Agency*, 154 F.3d 276, 280 (6th Cir. 1998) ("[t]he timing of a request for a temporary injunction under § 10(j) is by no means irrelevant to the question whether issuance of such an injunction would be just and proper."). Notably, in 2015, a district court in Illinois denied the NLRB's petition for injunctive relief under section 10(j) on the grounds that the NLRB waited more than 15 months after the alleged unfair labor practices occurred to petition for such relief. *Ohr v. Arlington Metals Corp.*, 148 F.Supp.3d 659, 674-675 (N.D. Ill. 2015). The court held that the NLRB's delay "implies that any harm the unit employees face is neither urgent nor exclusive to administrative delay." *Id.* at 674.

In this case, the Board waited almost two years after the initial unfair labor practice allegations before seeking injunctive relief. It waited over a year after the vast majority of the allegations were presented to it before seeking interim injunctive relief. While the Board will attempt to excuse its delay by citing its investigatory process, it is clear that the Board had enough information to seek injunctive relief on some of the allegations as early as May 23, 2013, when it

issued its initial complaint. The Board cannot delay over a year in seeking temporary injunctive relief, while at the same time claiming that injunctive relief is urgently necessary. Essentially, the passage of time has rendered whatever status quo existed prior to the complained-of actions in this case unrestorable.

II. THE DISTRICT COURT ERRED IN FINDING REASONABLE CAUSE TO SUPPORT A 10(j) INJUNCTION.

OHL raised substantial legal arguments that were either overlooked or ignored by the District Court. Specifically, part of the applicable legal analysis commonly known as *Wright Line* requires that the company have knowledge of employees' union activities or support. The District Court skipped over this element of the *Wright Line* analysis entirely, even though it was the basis for the ALJ to dismiss the allegation regarding Nate Jones' discharge. Moreover, the District Court completely ignored and failed to analyze any of the countervailing facts presented by OHL.

The Board applies the familiar *Wright Line* test when analyzing allegations under Section 8(a)(3) and 8(a)(4) of the National Labor Relations Act. *In Re Am. Gardens Mgmt. Co.*, 338 NLRB 644, 645 (2002). The elements required to support a *prima facie* violation are union or other protected concerted activity by the employee, employer knowledge of the activity, and a connection between union animus by the employer and adverse employment action. See, e.g.,

Consolidated Bus Transit, 350 NLRB 1064, 1065 (2007); *Desert Springs Hospital Medical Center*, 352 NLRB 112 (2008); *American Gardens Management Co.*, 338 NLRB 644, 645 (2002). Once the General Counsel has established a *prima facie* case, the burden shifts to the employer to show it would have terminated an employee even in the absence of protected activity. *Chadbury Beverages, Inc. v. N.L.R.B.*, 160 F.3d 24, 31 (D.C. Cir. 1998).

Wright Line is inherently a causation test and "[t]he ultimate inquiry" is whether there is a nexus between an employee's protected activity and the adverse employer action in dispute. *St. Bernard Hospital & Health Care Center*, 360 NLRB No. 12, slip op. at 1 fn. 2 (2013) (H. Johnson, concurring) (quoting *Chevron Mining, Inc. v. NLRB*, 684 F.3d 1318, 1327-1328 (D.C. Cir. 2012)). It is well recognized that "[t]he Board does not have authority to regulate all behavior in the workplace and it cannot function as a ubiquitous 'personnel manager,' supplanting its judgment. . . for those of an employer." *Epilepsy Foundation of Northeast Ohio v. N.L.R.B.*, 268 F.3d 1095, 1105 (D.C. Cir. 2001); *see also Detroit Paneling Systems*, 330 NLRB 1170, 1171 fn. 6 (2000) (Board "cannot substitute its judgment for that of the employer and decide what constitutes appropriate discipline"). "In short, an employer has the right to discharge an employee for any reason, whether it is just or not, and whether it is reasonable or not, as long as the

discharge is not, in part, in retaliation for union activities or support. The question of proper discipline of an employee is a matter left to the discretion of the employer." *Tama Meat Packing Corp.*, 230 NLRB 116, 126 (1977). "The Board is limited to determining whether there was a discriminative motive behind an employee's discharge and not whether the Board agrees with an employer's reasons or even finds them reasonable." *Id.; see also Borin Packaging Co.*, 208 NLRB 280, 281 (1974) ("[absent] a showing of antiunion motivation, an employer may discharge an employee for a good reason, a bad reason, or no reason at all. *Whether other persons would consider the reasons assigned for a discharge to be justified or fair is not the test of legality under Section 8(a)(3).*") (emphasis added); *Neptco, Inc.*, 346 NLRB 18, 19 (2005) (same); *Great Plains Beef Co.*, 241 NLRB 948, 964 (1979) ("mere fact an employer may act unreasonably does not prove it acted discriminatorily").

A. The District Court Erred In Overlooking OHL's Lack of Knowledge of Union Activity.

The District Court entirely omitted any analysis or findings on whether OHL had knowledge of Nate Jones' union activities or support. OHL argued at the District Court, and it argues to this Court that it had no knowledge of Nate Jones' union activities. Mr. Jones' alleged union activities included discussing the union with other employees, asking a manager questions about the union at an employee

meeting, and refusing to cooperate in the investigation of a co-worker. The District Court made no findings whatsoever, one way or the other, as to whether there were facts to support the NLRB's theory that OHL had knowledge of these alleged union activities. The ALJ, on the other hand, specifically addressed this issue. Shannon Miles, OHL's Senior Employee Relations Manager and the person who made the decision to discharge Mr. Jones, testified that she was not aware that Jones had engaged in protected activity. (Decision of the ALJ, Doc. 36-2, Page ID 587). The ALJ believed and credited Ms. Miles' testimony, and explicitly found that "Miles made the decision to discharge Jones and that, when she made this decision, she was not aware that Jones had engaged in any protected activity." (Decision of the ALJ, Doc. 36-2, Page ID 588). Based on this, the ALJ concluded that Jones' protected activity "was not, in fact, a substantial or motivating factor in her decision to discharge him." (Decision of the ALJ, Doc. 36-2, Page ID 588).

Nowhere in the record is there any evidence that would indicate that Ms. Miles, the decisionmaker involved in Mr. Jones' termination, had knowledge of Mr. Jones' union activities or support. Unlike the ALJ, who acknowledged this fact, the District Court failed to engage in any analysis of OHL's knowledge of Mr. Jones' union activity.

B. The District Court Erred in Finding Factual Support for Each of the Allegations.

The District Court glossed over or ignored significant factual arguments advanced by OHL. While OHL understands the applicable deference to the NLRB's evidence in 10(j) cases, there were vast swaths of the record that received no analysis or consideration by the District Court.

i. Nate Jones Was Lawfully Discharged.

Nate Jones was lawfully discharged when he left a propane lift unattended and running on October 16, 2013 in violation of OHL's safety policies. Mr. Jones had received a final written warning for a safety violation on June 14, 2013, four months prior to the incident leading to his termination. (GC Ex. 21). OHL conducted an investigation into the incident, and Shannon Miles ultimately decided that Mr. Jones should be terminated. (2560). Mr. Jones' discharge was based solely on his repeated safety violations rather than any alleged protected activity he engaged in.

Although Mr. Jones acknowledged that it is a violation of OHL's safety rules to leave a lift running after getting off of it, Mr. Jones attempted to lessen the seriousness of his offense by offering self-serving testimony that Bobby Hill would leave his lift running when he went into the restroom in the back of the warehouse. (256, 261-262, R. Ex. 4). Notably, none of the other witnesses from the Browne-

Halco account (Jennifer Smith, Sheila Childress, Jerry Smith, Luz Balderrama, and Stacey Williams) were even asked by the General Counsel or the Union to corroborate Mr. Jones' testimony regarding Bobby Hill leaving his lift unattended while he was in the bathroom. Moreover, Mr. Jones did not testify that any manager or supervisor had seen Mr. Hill leaving his lift unattended. The ALJ addressed this argument, stating that it "largely rests on Jones' testimony, which I do not consider very credible or persuasive." (Decision of the ALJ, Doc. 36-2, PageID 591).

Significantly, Ms. Miles testified in November 2012, at a previous NLRB hearing, that she had placed renewed emphasis on safety when she took over responsibility for Memphis. (2654). Specifically, Ms. Miles testified in November 2012, almost a full year before Mr. Jones' discharge, that when she arrived at OHL Memphis, she had decided that a first offense of not wearing a seat belt would result in a final written warning and a second offense would result in termination. (2654). Ms. Miles further testified (in this hearing) that she considered leaving a lift running and unattended more serious than failing to wear a seatbelt. (2650). Notably, the ALJ credited Ms. Miles' testimony on these points. (Decision of the ALJ, Doc. 36-2, PageID 587-589). Therefore, by the standard that Ms. Miles

articulated almost a year prior to Mr. Jones' termination, this violation warranted termination.

Once again, there is no indication whatsoever that Mr. Jones' union support had anything to do with his discharge. Mr. Jones' testimony conspicuously omitted any claim that he was a union supporter. OHL is left to wonder what union activity or protected activity he claims OHL to be aware of that forms the basis of his claims. The ALJ also noted this fact, stating in his decision that "Jones had minimal protected activities and the record does not establish that he ever signed a union card." (Decision of the ALJ, Doc. 36-2, PageID 586). Mr. Jones testified about speaking up in a meeting about his experience with a prior employer, Trane. Mr. Jones testified that he told Phil Smith in a meeting that Trane had paid employees a few more dollars per hour to "squash" the union organizing at Trane. (220). If anything, this comment is anti-union, not pro-union. Mr. Jones was suggesting that OHL could "squash" the union by paying employees more. This comment certainly does not constitute protected concerted or union activity that would prompt anti-union animus by OHL.

Mr. Jones speculated that "a lot of this was about Phil and his thing with Jerry in the breakroom that day." (272-273). However, all that Mr. Jones did with respect to the breakroom incident was provide a statement, which he presumably

believed to be truthful. It is unclear how providing a statement in an investigation is protected concerted activity or union activity. Perhaps Mr. Jones is suggesting that OHL was unhappy with the content of his statement for the Jerry Smith breakroom incident. Regardless, Mr. Jones' statement did not take sides. In fact, he claimed not to hear what was said. (R. Ex. 33). If anything, Mr. Jones' statement supports OHL's discipline of Mr. Smith, since it refers to a "back and forth" that Mr. Smith claims did not occur. Thus, the content of Mr. Jones' statement is not pro-union in any respect, and there is no evidence in the record that Mr. Jones engaged in any union activity or protected concerted activity. The ALJ specifically stated that Mr. Jones' involvement in the breakroom incident did not constitute protected activity. (Decision of the ALJ, Doc. 36-2, PageID 588).

Moreover, Ms. Miles denied any knowledge of any union activity or support by Mr. Jones and, as the ALJ acknowledged, "no evidence contradicted her claim that she was unaware of Jones' protected activity." (2671-2672; Decision of the ALJ, Doc. 36-2, PageID 593). The ALJ pointed to the fact that Ms. Miles' was not located in Memphis, and stated that the minimal union activity that Mr. Jones was involved in was "not the sort of protected activity most likely to be reported all the way up to Miles, who worked at the corporate headquarters rather than at the warehouses in Memphis." (Decision of the ALJ, Doc. 36-2, PageID 589). Thus,

OHL lawfully terminated Nate Jones for a second offense safety violation which his own testimony establishes.

ii. Jennifer Smith Was Lawfully Assigned Picking Duties.

Jennifer Smith's job functions were transferred from LTL (Less Than Trailerload) auditing to small parts picking within the Browne-Halco account in June 2013. The job functions of small parts picking is not more "onerous and rigorous" than LTL auditing, and the transfer in job functions was motivated by legitimate management considerations rather than Ms. Smith's union support.

As an initial matter, other than Ms. Smith's self-serving testimony, there is no evidence that small parts picking is more onerous and rigorous than LTL auditing. The small parts orders are a lot smaller, lighter, and easier to handle. (2227). The small parts go out via Fedex, rather than in boxes on pallets. (2227). According to OHL Operations Manager David Maxey, small parts picking is less strenuous than LTL auditing. (2227). The ALJ credited the testimony of Mr. Maxey over Ms. Smith's testimony. (Decision of the ALJ, Doc. 36-2, PageID 566). The ALJ stated that "[a]lthough the government argues that Smith's reassignment resulted in more onerous duties, based on the [] credited testimony of Maxey, I find that, if anything, the opposite was true." (Decision of the ALJ, Doc. 36-2, PageID 566). Thus, the ALJ concluded that Ms. Smith's duties as a picker are not "appreciably more arduous than that of auditor," and found that the change

in Ms. Smith's job duties was not an adverse employment action. (Decision of the ALJ, Doc. 36-2, PageID 567).

However, setting aside the issue of which job function is more "onerous and rigorous," the bottom line is that OHL had legitimate business reasons for transferring Ms. Smith from LTL auditing to small parts picking. As Mr. Maxey explained, the customer had asked him to increase efficiencies in the account. (2223). When he arrived in the account there were three LTL auditors, even though there was only enough volume to support one LTL auditor. (2224). Ultimately, Mr. Maxey had to choose between Ms. Smith and Ms. Dawson for the one available LTL auditing position.

Mr. Maxey chose Ms. Dawson for the position because she was more efficient and accurate. He testified that he reviewed audit logs and that Ms. Dawson was "producing two to three times more work." (2225, 2227). Additionally, Ms. Dawson was an LTL auditor before Ms. Smith ever arrived in the Browne-Halco account. (1011). The General Counsel's own witness called Ms. Dawson the "permanent fixture" of LTL auditing in the Browne-Halco account. (974, 1011). Thus, OHL chose Ms. Dawson over Ms. Smith for the LTL auditing function based on legitimate business considerations that are unrelated to Ms. Smith's union support. Again, the ALJ credited Mr. Maxey's testimony

concerning the reassignment of Smith to other job duties and his explanation for such reassignment. (Decision of the ALJ, Doc. 36-2, PageID 566).

III. THE DISTRICT COURT ERRED IN DECLINING TO APPLY EQUITABLE CRITERIA.

As a matter of first impression, OHL respectfully asks this Court to apply traditional equitable criteria in analyzing the "just and proper" element. OHL is not advocating abandoning the "reasonable cause"/"just and proper" standard in favor of traditional equitable criteria. To the contrary, OHL contends that traditional equitable criteria should be subsumed within the "just and proper" analysis. The Fourth Circuit follows this approach. *Muffley ex rel. N.L.R.B. v. Spartan Mining Co.*, 570 F.3d 534, 542 (4th Cir. 2009).

By definition, "just" is a term that calls upon the Court's equitable principles. The word "just" is defined by *Black's Law Dictionary* 8th Ed. (p. 880) as "legally right, lawful, ***equitable***." (emphasis supplied). This Court has not addressed the argument that equitable principles should be considered in analyzing the "just and proper" element, and this issue is left unsettled. *Detroit Newspaper Agency*, 154 F.3d at 280 ("[C]aselaw in this circuit does not flatly foreclose consideration of equitable factors such as this in § 10(j) cases."). Accordingly, OHL respectfully requests that the Court apply traditional equitable criteria in its analysis of the "just and proper" element.

IV. THE DISTRICT COURT ERRED IN DENYING OHL'S MOTION TO DISMISS.

OHL moved to dismiss the Petition in this case for lack of subject matter jurisdiction pursuant to Fed. R. Civ. P. 12(b)(1). (Motion to Dismiss for Lack of Jurisdiction, Doc. 9). "When subject matter jurisdiction is challenged under Rule 12(b)(1), the plaintiff has the burden of proving jurisdiction in order to survive the motion. In addition, the district court is empowered to resolve factual disputes when necessary to resolve challenges to subject matter jurisdiction." *Madison-Hughes v. Shalala*, 80 F.3d 1121, 1130 (6th Cir. 1996).

The Court lacks subject matter jurisdiction in this case because: (1) a valid unfair labor practice complaint is a jurisdictional prerequisite to injunctive relief under Section 10(j) of the Act, and (2) the unfair labor practice complaint in this action is invalid as a result of Ms. McKinney's invalid appointment by an unauthorized NLRB.

Prior to requesting a Section 10(j) injunction, the Board must issue a valid complaint alleging unfair labor practices. The Act provides:

> The Board shall have power, ***upon issuance of a complaint*** as provided in subsection (b) of this section charging that any person has engaged in or is engaging in an unfair labor practice, to petition any United States district court, within any district wherein the unfair labor practice in question is alleged to have occurred or wherein such person resides or transacts business, for appropriate temporary relief or restraining order. Upon the filing of any such petition the court shall cause notice thereof to be served upon such person, and

> thereupon shall have jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper.

29 U.S.C. § 160(j) (emphasis supplied). Thus, the section of the Act that confers subject matter jurisdiction on this Court specifically provides that the Board may only seek injunctive relief "upon issuance of a complaint."

As a "prerequisite to the filing of a Section 10(j) petition," the Board must first issue a valid complaint alleging unfair labor practices. *Gottfried*, 818 F.2d at 492; *see also* 29 U.S.C. 160(j) (Board authorized to seek an injunction only "upon issuance of a complaint"); *Schaub ex rel. N.L.R.B. v. Detroit Newspaper Agency*, 984 F. Supp. 1048, 1053 (E.D. Mich. 1997) ("Section 10(j) . . . makes the existence of a Board Complaint a prerequisite to relief."). A district court, therefore, has subject matter jurisdiction over the Board's petition only if the Board has issued a valid complaint.

An analogous case applied this requirement and granted the defendant's motion to dismiss a 10(j) action due to the Board's lack of authority to issue a valid complaint. In *Hooks ex rel. N.L.R.B. v. Kitsap Tenant Support Servs.*, an NRLB Regional Director brought a 10(j) action, and the defendant moved to dismiss for lack of subject matter jurisdiction. 2013 U.S. Dist. LEXIS 114320, 2013 WL 4094344 (W.D. Wash. Aug. 13, 2013). The court reviewed the recent Appointment Clause cases and adopted their reasoning without "need to add to

what is thoroughly explained" in those cases. *Id.* at *3. It consequently determined that the Regional Director had not been validly appointed by the Board and, as such, could not issue a valid Section 10(j) complaint:

> As applied to the facts of this case, [Regional Director] Hooks was without power to file the complaints against Kitsap in the underlying administrative matter. A petition for injunctive relief brought under Section 10(j) may be brought only "upon issuance of a complaint as provided in [29 U.S.C. § 160(b)]." 29 U.S.C. § 160(j). ***Without a valid complaint, Hooks is precluded from filing a petition for preliminary relief.*** Therefore, the Court grants Kitsap's motion to dismiss on this issue.

Id. at *3-4 (emphasis added). The same result is required here. Ms. McKinney lacks any validly-appointed authority to issue a complaint against OHL because her appointment over the Memphis region of the NLRB was made by an invalidly-constituted NLRB.

Section 10(j) of the Act specifically requires that that the complaint be issued "as provided in subsection (b) of this section." Section 10(b) of the Act, in turn, requires that the complaint be issued by "the Board, or any agent or agency designated by the Board for such purposes." Ms. McKinney was not "designated" by a properly constituted Board to issue the underlying unfair labor practice complaint against OHL. The only "designation" of Ms. McKinney's authority was the reorganization plan of the Board published in the Federal Register on

December 6, 2012. That reorganization plan was *void ab initio*, based on binding Supreme Court precedent.

At the time of the Federal Register notice, the Board was comprised of Chairman Pearce, Member Hayes, and recess appointments Griffin and Block. Mr. Griffin and Ms. Block's recess appointments were subsequently found to be invalid by the U.S. Supreme Court in *N.L.R.B. v. Noel Canning*, 134 S.Ct. 2550 (2014). In so holding, the Supreme Court affirmed the decision of the D.C. Circuit, holding that the actions of Griffin and Block were void ab initio. *Noel Canning v. N.L.R.B.*, 705 F.3d 490, 514 (D.C. Cir. 2013).

Thus, at the time of Ms. McKinney's appointment over the Memphis region, the NLRB only had two valid members, Chairman Hayes and Member Pearce. It is well-settled by the U.S. Supreme Court that the NLRB lacks a quorum to act when it only has two members, and any actions taken by those two members in the absence of a quorum are invalid. *See New Process Steel, L.P. v. N.L.R.B.*, 130 S. Ct. 2635 (2010). Accordingly, Ms. McKinney's appointment over the Memphis region was invalid pursuant to the Supreme Court's holdings in *Noel Canning* and *New Process Steel*. Since Ms. McKinney's appointment was invalid, she had no authority to issue a complaint against OHL, which is a jurisdictional prerequisite to this action. Therefore, the District Court lacked subject matter jurisdiction and

erred in denying OHL's Motion to Dismiss pursuant to Fed. R. Civ. P. 12(b)(1). (Order Denying OHL's Motion to Dismiss for Lack of Jurisdiction, Doc. 29).

V. CONCLUSION.

For all of the foregoing reasons, OHL respectfully requests that the Court reverse the temporary injunction imposed by the District Court and dismiss the NLRB's petition.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of FRAP 32(a)(7)(B) because this brief contains 8,446 words, excluding the parts of the document exempted by FRAP 32(f). This brief also complies with the typeface requirements of FRAP 32(a)(5) and the type style requirements of FRAP 32(a)(6) because it has been prepared in Microsoft Word format using 14-point Times New Roman proportionally spaced typed font.

/s Ben H. Bodzy
Ben H. Bodzy

CERTIFICATE OF SERVICE

I hereby certify that on June 29, 2017 a copy of the foregoing Brief of Plaintiffs-Appellants was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular United States mail, postage prepaid. Parties may access this filing through the Court's electronic filing system.

/s Ben H. Bodzy
Ben H. Bodzy

NO. 15-5211

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

M. KATHLEEN MCKINNEY, FOR AND ON BEHALF OF THE NATIONAL LABOR RELATIONS BOARD,

PETITIONER – APPELLEE,

V.

OZBURN HESSEY LOGISTICS, LLC,

RESPONDENT – APPELLANT.

On Appeal From the United States District Court for the Western District of Tennessee
Case No. 2:14-CV-02445

ADDENDUM 1 TO BRIEF OF APPELLEE

DESIGNATION OF RELEVANT DISTRICT COURT DOCUMENTS

Pursuant to Sixth Circuit Rule 30(g), Appellant Ozburn-Hessey Logistics, LLC, designates the following documents:

Description of Record Entry	Date Filed in U.S. District Court	Record Entry Number	Page ID #
Petition	06/13/2014	1	1-118
Motion to Dismiss for Lack of Jurisdiction	07/03/2014	9, 9-1	126-134
Text Order Allowing Compact Disc Exhibit to Be Filed with Clerks Office	08/18/2014	12	N/A
Compact Disc Containing Administrative Hearing Transcript and Exhibits[1]	08/08/2014	15	N/A
Compact Disc Containing Administrative Hearing Transcript and Exhibits[2]	09/26/2014	19	N/A
Order Denying Motion to Dismiss for Lack of Jurisdiction	11/20/2014	29	376-383
Order Granting Petition for Temporary Injunction	01/29/2015	30	384-409
Notice of Appeal	02/27/2015	34	443-445
Motion for Indicative Ruling	05/13/2015	36, 36-1, 36-2	446-635

[1] Pursuant to the District Court's Order on August 18, 2014 (Doc. 9), the District Court approved Petitioner M. Kathleen McKinney's request to file the transcript and exhibits from the administrative hearing by compact disc. Petitioner submitted a compact disc to the court containing these documents on the same date.

[2] Petitioner inadvertently failed to include certain files on the compact disc submitted to the court on August 18, 2014, so Petitioner subsequently submitted another compact disc to the District Court on September 26, 2014, containing the remainder of the files.

Petitioner's Response to and Partial Opposition to and Partial Concurrence with Respondent's Motion for Indicative Ruling	05/29/2015	37	636-661
Respondent's Reply to Petitioner's Response to and Partial Opposition to and Partial Concurrence with Respondent's Motion for Indicative Ruling	06/10/2015	40	676-685
Respondent's Supplement to Its Motion for Indicative Ruling	06/30/2015	41	686-692
Petitioner's Response in Opposition to Respondent's Supplement to Its Motion for Indicative Ruling	07/14/2015	42	693-696
Order Amending Injunction	01/05/2016	49	724-727
Order on Motions for Indicative Ruling on Disputed Issues	03/10/2017	52	734-744